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Chair

The Honourable MaryAnn Mihychuk

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● (1535)

[*English*]

The Chair (Hon. MaryAnn Mihychuk (Kildonan—St. Paul, Lib.)): Welcome, everybody.

It's a historic day, and now we are at the INAN committee. We are discussing Bill C-262, an act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples.

As we sit in this relatively new committee room, we are actually on the unceded territory of the Algonquin people. History is still alive and we must understand the truth before we can deal with reconciliation. We have begun the process.

The way it works is that you'll have up to 10 minutes to present. I'll try to give you signals, first very subtle and then not so subtle as we get closer to the time being up, so just keep an eye on me once in a while and I'll let you know. Then, after the presentations, we'll go to rounds of questions with the honourable MPs who are here, to get even more insight on your words of wisdom.

To begin with, we've got the Congress of Aboriginal Peoples.

Hi, Robert. Welcome.

National Chief Robert Bertrand (National Chief, Congress of Aboriginal Peoples): Thank you.

Chairman Mihychuk, vice-chairs McLeod and Saganash, committee members, representatives, and guests, I am National Chief Robert Bertrand of the Congress of Aboriginal Peoples—in other words, CAP.

I am pleased to be with you all today and wish to acknowledge that we are on the traditional and unceded territory of the Algonquin peoples.

[*Translation*]

The teachings and wisdom of our ancestors are essential for guiding our work and our discussions today.

[*English*]

I would like to recognize NDP MP Romeo Saganash for his dedication and perseverance in advancing Bill C-262 and commend the Liberal government for its full support of this crucial bill. Enshrining the principles set out in the UN declaration in Canadian law is a momentous step toward genuine reconciliation and safeguarding the individual and collective human rights of all indigenous peoples in Canada.

For over 47 years, CAP has committed itself to advocating for the rights and needs of the off-reserve status and non-status Indians, Métis peoples, and southern Inuit, the majority of whom live in urban, rural, and remote areas. CAP also serves as the national voice for its 11 provincial and territorial affiliates, which are instrumental in providing us with a direct connection to the priorities and needs of our constituents.

[*Translation*]

From coast to coast, the provincial and territorial affiliates of the Congress of Aboriginal Peoples play a leading role in providing us with direct access to the needs and interests of our fellow citizens.

[*English*]

Since Canada's full endorsement of the UN declaration, our people have been questioning what this means, what impact UNDRIP will have, and what the future now holds for them. During this time, we also witnessed Canada's commitment to advancing reconciliation, the TRC's 94 calls to action, and a renewed relationship with indigenous peoples based on recognition and implementation of indigenous rights.

As citizens of this country, we have come to recognize that to move forward together we need to have true reconciliation between all indigenous peoples, non-indigenous Canadians, and all levels of government. However, Canada's proclaimed renewed relationship with indigenous peoples and vision to achieve reconciliation has seemingly extended itself in a distinction-based approach to a select number of the five national indigenous organizations recognized by the Government of Canada.

Disguised as reconciliation, this approach is a strong indicator of the desire on the part of the federal government to simplify its political interface with indigenous peoples. This lends itself to creating a culture of exclusion, division, and inequality. One could argue that it further perpetuates competition for social, political, and economic interests amongst indigenous groups, communities, and families. As was done through the Indian Act, which created eligibility rules that classified status Indians as Canada's legitimate Indians for public policy purposes, Canada continues to justify its exclusionary relationship through public policy and law.

The federal government continues to pose the question: Who are non-status Indians? They are Indians who were ultimately forced into an identity category of the government's own creation. As of the 2016 census, non-status Indians—some 232,000 indigenous people—now account for nearly a quarter of the first nations population in Canada.

A great number of our constituents are skeptical that any significant changes would ensue as a result of UNDRIP and Bill C-262, as their voices have largely been ignored in terms of political recognition and engagement in policy development on substantive issues that affect them.

Certainly, the inherent rights expressed in the UN declaration are not exclusive or limited to federally recognized status Indians or indigenous peoples who live on reserve in Inuit Nunangat or the Red River Settlement.

● (1540)

Canada's ongoing unilateral decision-making on behalf of non-status Indians and the urban indigenous peoples must come to an end, as it is a direct violation of their fundamental human rights in UNDRIP.

Our constituents are the most vulnerable and marginalized of all Canadian citizens, who have and continue to fall through the jurisdictional and legislative cracks. In 1972, the Secretary of State for the Government of Canada submitted a confidential memo to cabinet showing that Canada was well aware that the Métis and non-status Indians were far more exposed to discrimination and other social disabilities and were the most disadvantaged of all Canadian citizens, living in circumstances that were intolerable, judged by the standards of Canadian society. Over 45 years later, we must ask ourselves why this situation remains the same.

For years, both federal and provincial governments in Canada have denied having legislative authority over Métis and non-status Indians, the federal government under the justification that subsection 91(24) of the Constitution has precluded them from doing so, and the provincial governments on the basis that the issue is a federal one. This has left many Métis and non-status Indians in what the Supreme Court of Canada has characterized as "a jurisdictional wasteland with significant and obvious disadvantaging consequences". Justice Michael Phelan acknowledged that these consequences produced a large population of collaterally damaged people as the result of their being deprived of programs, services, and intangible benefits, recognized by all governments as needed.

In 1999, CAP addressed a crucial stalemate directly by launching a legal challenge in Daniels v. Canada. On April 14, 2016, after a 17-year court battle, the Supreme Court issued an unanimous decision on Daniels, declaring that the Métis and non-status Indians are Indians under subsection 91(24) of the Constitution Act of 1867. This landmark ruling confirmed that Canada is constitutionally responsible for the Métis and non-status Indians. It also affirmed that the federal government has a fiduciary relationship with the Métis and non-status Indians just as it does with status Indians and has a duty to consult and negotiate with them on matters that affect them.

In the Supreme Court's decision on Daniels, Supreme Court Justice Rosalie Abella stated:

> As the curtain opens wider and wider on the history of Canada's relationship with its Indigenous peoples, inequities are increasingly revealed and remedies urgently sought. Many revelations have resulted in good faith policy and legislative responses, but the list of disadvantages remains robust. This case represents another chapter in the pursuit of reconciliation and redress in that relationship.

The Daniels decision, in addition to the application of UNDRIP and Canadian law, has the potential to transform the relationship between Canada, Métis, and non-status Indians, and help shape the framework, including new legislation to recognize and implement indigenous rights in support of its commitment toward reconciliation with indigenous peoples.

As of today, two years following the decision, Canada remains an inactive partner in engaging CAP on Daniels. CAP, and by extension, the voices of the Métis and non-status Indians continue to experience exclusion from crucial discussions with the Canadian government that impact the rights and the lives of our constituents.

Bill C-262 would require the federal government to take all necessary measures to ensure that the laws of Canada are consistent with UNDRIP and develop a national plan to do so in consultation and co-operation with indigenous peoples.

This concludes my remarks this afternoon.

● (1545)

[*Translation*]

Thank you very much. *Meegwetch*.

[*English*]

The Chair: Thank you.

Now we're moving to the president of the NCC, Todd Russell.

Mr. Todd Russell (President, NunatuKavut Community Council): Thank you, Madam Chair. Good afternoon to you, to your vice-chairs, and to all honourable members at this table.

A special welcome goes to Ms. Yvonne Jones, with whom I'm very familiar as my member of Parliament, and who is also a distant relative. We know each other, being indigenous in this country. We know who each other's families are, their histories, their loves, their wants, their needs. It's a peculiarity about indigenous peoples that is sometimes missed that our nations are very close. It's an important fact when we talk about the issues that are important to us.

My name is Todd Russell, and I am a proud Inuk. I am here today on behalf of the NunatuKavut Community Council and I represent the southern Inuit.

Let's begin by acknowledging that we are on the unceded traditional territory of the Algonquin people. I hear this a lot. For some these may be mere words, but it is a profound fact, and that fact comes with meaning. Some of that meaning is embedded in Bill C-262.

It is important to understand not only this fact but who it is you're speaking with. When I speak, I speak on behalf of the southern Inuit, and I look at Bill C-262 through our lens. NunatuKavut means "Our ancient land." It is the territory of the southern Inuit who reside primarily in southern and central Labrador. Our people have lived in their traditional territories since long before Europeans set foot on our soil. As it was in times of old, and despite centuries of colonialization, we remain deeply connected to the land, sea, and ice that make up NunatuKavut, our home.

While we have never surrendered our rights or title to our land, the Government of Canada has never fully respected our rights and has not lived up to its constitutional obligations to recognize and protect who we are and the lands we occupy. Our concerns have often been ignored when it comes to resource development in our territory, and after decades of work we are still waiting for Canada to finally accept our claim for negotiation.

Bill C-262 provides us an opportunity to move past this colonial relationship and to enshrine our rights to our lands and to have them recognized and protected.

Let's look at the intent of Bill C-262.

I want to thank Mr. Romeo Saganash, MP for Abitibi—Baie-James—Nunavik—Eeyou, for introducing this bill. Its intent is to ensure that all federal laws are consistent with principles in the United Nations Declaration on the Rights of Indigenous Peoples, as described in clause 4 of the bill.

What does this actually mean? In December 2017, Mr. Saganash provided some clarity around the intention of the bill when he recommended that it be referred to this committee. He said:

> Bill C-262 would also allow us to begin to redress the past wrongs, the past injustices that were inflicted on indigenous people. This is the main objective of Bill C-262, to recognize that on one hand they are human rights but on the other hand that we begin to redress the past injustices that were inflicted on the first peoples of this country.
>
> One of the things that we can do in the name of reconciliation is to adopt this framework that I am proposing through Bill C-262. I do not need to remind members that the world is watching.

While we are supportive of the bill and the intentions behind it, there is still much uncertainty as to what this legislation will actually do and how implementing it will affect the Inuit I represent. We also have concerns about whether the bill goes far enough for the recognition, protection, and implementation of the rights of indigenous peoples. We are, however, encouraged by the Government of Canada's support for the bill.

We note the following words from Ms. Yvonne Jones, parliamentary secretary to the minister of INAC, in support of the bill during second reading. Ms. Jones said:

> Bill C-262 proposes a process of dialogue and the development of an action plan aimed at ensuring consistency between federal law and the declaration. Such an approach would be consistent with other ongoing processes, including the review of laws, policies, operational practices, and the permanent bilateral mechanisms that are in place.

● (1550)

Clearly the government's intention is to facilitate that dialogue, that process, and an action plan aimed at ensuring that Canadian laws are consistent with the United Nations declaration, and indeed that Canadian laws are aligned with Canada's commitments under the declaration.

In this regard there is much to be done, and it cannot be done in isolation. Comprehensive legislation and policy changes affecting indigenous peoples must be done in partnership with indigenous nations across Canada. The Inuit of NunatuKavut must be part of that process in a nation-to-nation relationship with the federal government.

This bill must also be viewed through the lens of the Truth and Reconciliation Commission's calls to action, which speak directly to this declaration. In fact, this bill is a direct response to call to action number 43. The federal government has clearly indicated its commitment to implementing these calls to action, and implementation of the declaration is a critical part of this work.

The TRC specifically addresses reconciliation as relationship. As the first of its 10 principles states, “The United Nations Declaration on the Rights of Indigenous Peoples is the framework for reconciliation at all levels and across all sectors of Canadian society.”

I also believe that this bill will only be effective when there is a clear plan around its implementation. To paraphrase Grand Chief Willie Littlechild—one of the architects of the declaration and the TRC report—there must be a clear vision and a clear path and plan for how it will be achieved.

What will Bill C-262 do? It is important to note that Bill C-262 is not creating any new rights for indigenous peoples. The rights of indigenous peoples as outlined in UNDRIP already exist in Canadian law; they are our inherent rights and are already recognized and affirmed in section 35 of the Constitution.

What Bill C-262 will do is create a positive obligation to ensure that existing and new legislation is consistent with our indigenous rights and clarify the circumstances in which those rights must be honoured in government decision-making. In other words, the bill will require the federal government, and indeed the provinces, to meet the promise of section 35 of our Constitution.

The ability of indigenous groups to oppose legislation or projects that adversely affect their rights operates on a spectrum. Indigenous peoples and the Inuit whom I represent specifically can and must have the ability to exercise self-governance and to make decisions affecting their lands.

This has already been recognized by the Supreme Court of Canada. In the Tsilhqot'in decision the court granted aboriginal title to more than 1,700 square kilometres of territory. However, the court also stated that the indigenous groups' interests must be reconciled with the greater public interest. Bill C-262 will not necessarily change this principle, but it strengthens it.

Free, prior, and informed consent, as contained in articles 19 and 32 of UNDRIP, is about self-governance. It is not in our view, as some would argue, about whether indigenous peoples have a veto. Members should ask themselves why certain people, in speaking about FPIC, use such pejorative words to describe indigenous decision-making and self-governance. Rather, these articles reaffirm the requirement for Canada to adhere to its already-existing obligations to consult, cooperate with, and accommodate indigenous peoples, and to do so with a view to obtaining our consent to activities that affect our lands and resources or to legislation that affects us.

In addition to clarifying when the requirement to seek consent applies, UNDRIP clarifies the nature of that consent: that it is to be obtained without coercion, that it be given prior to project decisions being made, and that it be based on the best available information.

What constitutes free, prior, and informed consent may vary depending on the circumstances and will be the subject of ongoing nation-to-nation negotiations and dialogue. Recent history demonstrates how the failure to implement and update laws to conform with UNDRIP can have quite negative impacts. The Muskrat Falls project, located in our territory, provides a prime example.

The passing of Bill C-262 cannot result in government simply continuing to follow existing policies and procedures with respect to the recognition of rights.

I just need one more minute to finish.

● (1555)

The federal government has recognized that its comprehensive claims policy does not adequately address the needs and realities of all indigenous groups. While I am optimistic about the newly announced recognition and implementation of rights framework, we will be watching closely to see how it will be put into action.

One concrete and meaningful step has been our engagement with the federal government on the acceptance of our claim for negotiation. As a further demonstration of the government's commitment to the principles of UNDRIP, we anticipate that this work to accept and negotiate our land claim will continue in a manner that facilitates the unique needs and positions of our people.

The Chair: Thank you. That's a good place to end.

Mr. Russell isn't a member of Parliament. Sometimes we can be long-winded. I'm not looking at Romeo, but—

The questioning opens with MP Will Amos.

Mr. William Amos (Pontiac, Lib.): Speaking of former MPs, I'd like to welcome all of our guests, but also make special mention of the fact that Mr. Bertrand, the national chief, is also a former member of Parliament, a former parliamentary secretary, and a constituent of mine, as well.

National Chief Robert Bertrand: I was going to mention that.

Mr. William Amos: It's an interesting moment. I'm quite proud to be here before you, Mr. Bertrand.

I would love it if you could help us to understand the nature of the enhanced engagement you would like to see with our government. In your testimony, you mentioned that CAP's view is that the interactions between your organization and the crown have been inadequate. I'm not sure if that is solely directed towards the federal crown, or if it there's a provincial aspect to that as well.

I would like to hear more about what specifically you would like to be doing more of, or what aspect could be improved from CAP's perspective.

[*Translation*]

National Chief Robert Bertrand: Thank you very much for your question, Mr. Amos. If I may, I will answer in French.

As I mentioned in my remarks, the April 2016 decision of the nine Supreme Court justices was unanimous. Basically, this decision stated that all off-reserve indigenous people were now considered Indians under the 1867 definition.

Following that decision, we met with the government two or three times. If I remember correctly, we had a meeting here, in Ottawa, in the March following the ruling in the Daniels case. We invited several people to this meeting. The vast majority of them were members of the Congress of Aboriginal Peoples. We invited a range of people from different parts of Canada. I think there were also some lawyers.

The purpose of the meeting was to study the scope of the decision. As I said, we submitted a report a year and a few months ago to Indigenous and Northern Affairs Canada, but nothing has changed since then. I would have thought that we would have had more meetings with the government. I understand that this is important news for the government, and it is very important for us too. I don't want to speak for the department, but I think everyone was caught a little off guard by this decision.

We are doing our job right now. As you can see, one of our tasks is to meet with you. So we can tell you what we think of this decision. We would also like to start a dialogue with the department and with the Government of Canada.

● (1600)

[*English*]

Was that long-winded enough, madame?

The Chair: No, you could keep going, but it's up to the questioner.

[*Translation*]

Mr. William Amos: I appreciate your comments, Chief Bertrand. It is sometimes awareness and engagement work by the deputies, or even the government. On this side, we're listening. We're ready to make an appointment with the people in your organization, your colleagues, to better understand how you envision the scope of the Daniels decision and how it will affect our day-to-day work.

I will ask a question as a member of Parliament, since I'm the MP for Pontiac, and I represent the community of Fort-Coulonge. At the local level, what could I do better for the people your organization represents?

National Chief Robert Bertrand: What I'm going to say applies not only to you, Mr. Amos, but to all members sitting around this table.

As I have said many times before, about 70% of indigenous people currently live off reserve. These are figures from Statistics Canada, the government's own numbers. I'm not here to tell you that the Congress of Aboriginal Peoples represents all these people. However, we represent a good portion of them. As you know, the CAP has no members, just affiliates. We have an affiliate in each province. I am very pleased that our Labrador affiliate—our friend Todd Russell—is present here.

We have all the tools that can help solve the problems of unemployment, housing and education, but we are not asked to attend meetings. I find it regrettable that the CAP is not invited. As I mentioned earlier, it is one of five indigenous organizations in the country. If I were the government, I would try to use—

● (1605)

[*English*]

The Chair: You can finish your sentence.

[*Translation*]

National Chief Robert Bertrand: If I were the government, I would try to use all the tools within reach to solve the problems that indigenous people living off reserve are currently facing.

[*English*]

The Chair: That ends our time for that round. We're now moving to MP Cathy McLeod.

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): Thank you, Madam Chair.

It's good to see Mr. Russell, who was here during my time. Of course Mr. Bertrand—thank you for coming—was a bit before my time as a parliamentarian.

I'm going to start with Mr. Bertrand. This is something I have found very puzzling, and I'm not sure where the government is going. I'm glad you're talking about the important consequences of the Daniels decision and how you perceive it as relating to a nation-to-nation relationship, in terms of the government's moving forward.

Can you talk to me a bit about how you see that overlay and interplay? I think it's complicated and I don't know how they're going to get to a place where they can have the appropriate consultation that is certainly required.

National Chief Robert Bertrand: It is very complicated, and—I have to be honest—it's even complicated for me. I live this 365 days of the year and still don't have my mind wrapped around it. These are very difficult problems, and the solutions are also very difficult to come to.

What has to be done is that we sit down with the federal government and start discussing and trying to find solutions. If you ask me what my solutions are for this or for that.... It's a much more complex problem. You not only need legal advice, but all different kinds of advice to bring solutions to problems on housing and education.

What we should do is at least start talking.

Mrs. Cathy McLeod: Yes. I think it would be fair to say that if Bill C-262 passed tomorrow, the government would have an obligation.... Well, it has an obligation anyway, but they haven't figured out how to meet that obligation, given the Daniels decision.

Mr. Russell, I was going to go to you next.

I know you talked about its being very inappropriate to use the word “veto” in relation to free, prior, and informed consent. I respect your saying that, although I want to point out that a number of indigenous communities themselves use that word, so I don't think it's a word that is used that consistently. Indeed, one NDP member said, for example, that free, prior, and informed consent means that with a project that might cross boundaries, every single community impacted by it would need to give consent, or the project would not go forward. We have, then, a member of Parliament for the NDP on television stating that very specific perspective on what this bill means.

I think we need to flesh this out. If we don't have a common understanding, we're going to be in a very difficult position. Although you said it's a distraction, I don't think, when you have so many people who perceive vetos in every single community requiring support of a project, that it's a distraction; and I think it's an important point of discussion.

Mr. Todd Russell: I said that certain people who use the word “veto” say it in a pejorative way, in the sense that it is negative or that it would prejudice our particular position on free, prior, and informed consent.

We take the view that it would be inconsistent with the inherent right to self-governance for indigenous peoples not to have the ability to either consent or provide non-consent to a project that is happening on our lands and that is integral to our survival and our ongoing existence. When we say that we have that ability, it is seen in the context of self-governance.

I don't believe there is any member around this table who would disagree that the inherent right of self-governance is embodied in the promise of section 35 and has explicitly been articulated to be so by certain court decisions, such as that in Tsilhqot’in. Would any member disagree that if you're a self-governing people, you actually must have that ability to say what's happening on your lands?

I see it, then, in the context of self-governance. All of these things, though, are contextualized as well. Very few rights that anybody has are absolute rights. Usually they come within a certain kind of framework or within a certain type of context.

I can understand, then, where you're going, but I think what this—

● (1610)

Mrs. Cathy McLeod: Okay, I'm hoping to get one more question in, so—

Mr. Todd Russell: Yes. I think the declaration, though, does provide some clarity about FPIC in particular and certain other articles within the declaration.

Mrs. Cathy McLeod: We know, for example, that article 19 talks about laws of general application and the obligation of the government. I'm looking at something like the marijuana bill as an example. We're hearing right now that as a result of the Daniels decision we're even having trouble defining where those conversations have to be, never mind getting to a place where the government could move forward, even in their four-year mandate.

They've made a commitment around legislating marijuana. If this bill is passed, they would not know whom they could talk to, so they would be unable to move forward with essentially anything during their four-year term, if they were to fully respect what Bill C-262 is doing.

The Chair: You have about 30 seconds.

Mr. Todd Russell: Respectfully, I disagree. It is obvious that the government knows who to talk to. We've been talking to each other for a very long period of time. If you look through the lens of reconciliation, it talks about how we engage with one another. I think it's a bit of an overarching type of statement to basically say that you can't get anything done because of free, prior, and informed consent. It happens every day. It happens every day between provinces and the federal government; it happens every day between municipalities and the provinces; it happens between indigenous governments and other levels of government.

The Chair: Now the questioning will move to MP Romeo Saganash.

Mr. Romeo Saganash (Abitibi—Baie-James—Nunavik—Eeyou, NDP): Thank you, Madam Chair.

To our guests this afternoon, thank you, and thank you for your contribution to this study.

[*Translation*]

I would like to start with you Chief Bertrand.

First, I'm sorry to have missed part of your presentation. I arrived late because of a vote in the House this afternoon.

You talked about a process that continues to be drawn out in your case, even since the ruling in the Daniels case two years ago. The current government has been in power for two and a half years.

How do you think this process, or your case, would benefit from the framework proposed by Bill C-262?

What I'm really proposing here is a reconciliation framework. I would like to hear your comments on your specific case.

National Chief Robert Bertrand: The fact that the United Nations Declaration on the Rights of Indigenous Peoples would now be framed in legislation could—I won't say "force"—push the government to negotiate a little more with us as to the scope of the decision in the ruling in the Daniels case.

As you know, as National Chief, I have to attend all the general assemblies of all our affiliates. Whether in Newfoundland, Labrador or Quebec, people are still wondering what we have gained from the Daniels affair.

As I mentioned earlier, we didn't discuss education, housing, hunting and fishing. There is so much to start the discussion. Many of these topics concern not only the federal government, but also the provincial and territorial governments. I was in Lac-Saint-Jean at the end of the week, and people were wondering about fishing on Lake Saint-Jean. Were they going to be allowed to as registered Indians? I couldn't answer them.

Maybe in five or six years, after discussions with both levels of government, we can come to some sort of agreement. But we haven't even started the discussion. I hope Bill C-262 will help us push the government to negotiate with us.

● (1615)

Mr. Romeo Saganash: Before I turn to Mr. Russell, I have one last quick question for you. In response to another question, you mentioned that things are more complex than we think. This is the case in any negotiation process.

What dimension of your discussions with the federal government do you think would be the most difficult to deal with and would challenge both parties more? You just mentioned the issue of hunting and fishing, which has a territorial dimension.

Is this one of the dimensions that could pose difficulties?

National Chief Robert Bertrand: There are many. Hunting and fishing are one. There's housing as well.

I remember reading a study that talked about the impact of living conditions for indigenous people living off reserve. They have an effect on young people who don't have proper housing to return to at the end of the school day. If they don't live in adequate housing, it really hurts their performance at school.

[*English*]

Mr. Romeo Saganash: *D'accord*.

Mr. Russell, first of all, thank you. It's good to see you again. We met a couple of years ago.

I noted carefully some of the words you used in your presentation. I agree entirely with some of the things you said, including the fact that Bill C-262 does not go "far enough". Those were the words you used.

Which part of Bill C-262 would you see the possibility of strengthening? Is it changing "free, prior and informed consent" to a veto or something else? I don't want to focus on FPIC, because it's an error to focus on those specific articles when we have 46 articles and a preamble and paragraphs that are important. That's not how our legal system works, in any case. I'd like you to elaborate on that.

● (1620)

Mr. Todd Russell: Well, I talked about the fact that this particular bill does not create new rights, and neither does the declaration. In that context, I believe that this in some ways strengthens certain laws that we have within Canada.

If we want to talk about FPIC, or free, prior and informed consent, that might be one place we could start. I think the declaration provides some clarity around that. While it provides clarity, I think it also strengthens the existing law that the Supreme Court of Canada decided on in Tsilhqot'in, which means that when we have title to our lands, when that is recognized and affirmed, then we have decision-making authority; we have decision-making power, which is consistent and is really at the heart of self-governance. I would think that the declaration would also shore up existing land claims agreements, particularly those that have self-governance agreements —

The Chair: Thank you.

Mr. Todd Russell: —and those that do provide jurisdiction for indigenous governments.

Mr. Romeo Saganash: Thank you.

The Chair: Thank you.

I understand that by agreement we have come to the end of our allotted time for the first panel. I want to thank you wholeheartedly for coming out again to see us and for providing your insights.

Meegwetch. Safe travels.

We're going to call up the second panel, so we'll take a short recess.

● (1620)

(Pause)

● (1625)

The Chair: I'm going to ask that we get back into session. We have a guest from Vancouver who is waiting.

Welcome to our committee. We are very pleased to have you here.

We have three presentations. Geoff Plant is by video conference from Vancouver. In front of us, we have the Grand Council of the Crees and Thunderchild First Nation.

Each presenter will have up to 10 minutes. Then we'll go into a question session. Because we have three presenting groups, I will ask that the MPs direct their questions specifically to either our panellist in Vancouver or somebody who is here in person.

Welcome, everybody. I don't want to take more time. This session will end, by agreement, at 5:20.

We are beginning with you, Geoff. Welcome.

Mr. Geoff Plant (Partner, Gall Legge Grant Zwack LLP, As an Individual): Thank you very much. I'm honoured to have been invited to appear in front of you.

I'm here today to speak in support of Bill C-262. I have a few minutes of prepared remarks, but I'm sure it will be less than 10.

I want to begin with two observations from most of a career spent as a lawyer and politician and also as a student of indigenous history and policy.

The first is this. Ever since the decision of the Supreme Court of Canada in the 1973 Calder case, courts have led the development of indigenous rights recognition policy. Governments have been in response mode, and the responses have often been reluctant and incomplete.

Nearly half a century on from Calder, the recognition and implementation of UNDRIP, as I'll call it, presents a unique opportunity for governments to take back the mantle of policy leadership—to be proactive rather than reactive. As a Canadian, I'm proud of that opportunity. As a British Columbian, I should also say that there is a potentially important and rare convergence, because both Canada's government and B.C.'s are committed to embrace and implement UNDRIP.

The second general comment I want to make is a broad historical summary, which is probably dangerous because of its breadth, but let me suggest that our thinking about indigenous issues has changed over time. Mine certainly has.

A century and a half ago, the stated goal was assimilation. This objective gradually—and thankfully—evolved into a different approach. Recognizing that indigenous peoples had pre-existing rights, these rights were half-recognized or sometimes converted into the form of claims, and the goal became how to design processes that would settle these claims, as if by settling them the claims could be made to go away, certainty could be purchased, and title could be settled.

Now, I suggest, we may finally be ready for a new, much better paradigm. The starting point is that famous last sentence of Chief Justice Lamer in his judgment in the Delgamuukw case where he said, “Let us face it, we are all here to stay.”

This sentence invites us to think less in terms of claims and claimants and more in terms of relationships—enduring relationships. We can begin to imagine a dialogue that's not about closure but about openings, a dialogue based on an equality of policies, where we're not aiming to settle title but rather to give meaningful effect to the indigenous right of self-determination. UNDRIP is a powerful tool for this purpose.

If asked, I would be the first to admit that Bill C-262 is an unusual bill. As someone who has drafted, debated, and enforced legislation, I'm a bit of a traditionalist. If government intends to require something by law, I usually want to know precisely what is being required. This is so I can predict the impact and implications and also the cost of what is intended. As a lawyer, I also value precision because it allows me to advise my clients about their rights and obligations. This bill does not satisfy those typical requirements, but it's not a typical bill. It's closer to constitutional than conventional law. It's perfect for its purpose.

Most importantly, perhaps, this bill leaves the details and the mechanics of how Canada's laws and practices will be made consistent with the objectives of UNDRIP to be worked out with indigenous peoples. The language in clauses 4 and 5, that phrase "consultation and cooperation", is very important. Those words capture the important reality that it is not for the Government of Canada to decide unilaterally how the principles and obligations of UNDRIP will be achieved. This bill requires government to engage with indigenous peoples to make this happen. That legitimizes and empowers the indigenous voice and authority on these fundamental issues.

● (1630)

There are three reasons why this high-level commitment to consult and co-operate is important.

First, it allows for nuanced, local, site-specific solutions to meet the wide variety of contexts and circumstances in which recognition of UNDRIP will arise. It's simply not possible, nor is it desirable, to anticipate all of those situations in one piece of legislation. This bill gives marching orders to those who will have to do the hard work on the ground of making this real.

Second, it increases the likelihood that the solutions that will be found will have shared buy-in, which, I respectfully suggest, is an increasingly elusive goal in public policy decision-making these days.

Third, consultation and co-operation are themselves foundational principles for the needed new relationships. I envision relationships not characterized by line-item vetoes where consent is conditional on agreement to every single clause and condition of every decision, but rather through negotiated give-and-take in a manner that is familiar to anyone who has participated in complex government-to-government negotiations and problem-solving.

I know there are concerns that the full recognition of UNDRIP, no matter how well intentioned, will simply add more roadblocks to the development of lands and resources. That is certainly a concern of some here in British Columbia.

The concern, as I'm sure you all know, is with UNDRIP's statement that resource development requires the "free, prior, and informed consent" of indigenous landowners. I don't dismiss this concern, but I strongly believe that adoption of UNDRIP standards represents a tremendous opportunity to change how land and resource decision-making is done, in a way that will benefit everyone. Properly implemented, UNDRIP offers an opportunity to replace conflict on the land with co-operation and to make real progress towards reconciliation.

The starting point for a consideration of the requirement of free, prior, and informed consent is the acknowledgement that governments do not seek permission from every single one of us before decisions are made. Rather, we elect governments to make such decisions on our behalf. The result of this process of self-determination—that is, the right to choose by whom and how we are governed—is that those who govern, broadly speaking, have our consent to do so.

I suggest that we ought to see the idea of free, prior, and informed consent in the same terms. Full inclusion in decision-making processes, acknowledgement of the legitimacy of diverse perspectives, and shared participation, responsibility, and accountability for outcomes become the means by which the necessary consent is obtained.

What's needed, then, I suggest, are new decision-making processes. Today, first nations are consulted about proposals, but non-indigenous governments usually have the last word. There's a need for new models that include first nations as shared decision-makers, so that they are not simply affected by the decision, but are partners in it.

Bill C-262 should cause the Government of Canada to initiate processes of consultation and co-operation that will lead to the design and implementation of these new models, at least within the fields of federal legislative authority. Full inclusion not only respects indigenous ownership of their lands and resources; it also respects the right of indigenous peoples to decide for themselves how their lands are to be used and how they are to be governed. Full inclusion is the pathway to real consent. It meets both the letter and the spirit of UNDRIP, and it will move us away from conflict to co-operation. Full inclusion is a necessary step on the road to reconciliation.

There's no certainty here. Mainly, there is an opportunity, but it's the right opportunity. Bill C-262, in my respectful opinion—

● (1635)

The Chair: Thank you, Mr. Plant.

Mr. Geoff Plant: —creates a viable framework within which we will all have a chance at achieving real progress towards reconciliation.

Those are my remarks. Thank you.

The Chair: Those minutes just tick right by, don't they? You went a bit over. Thank you for those comments.

We're now moving to the grand chief of the Grand Council of the Crees.

It's nice to have you here. We've heard great things about the agreement you have. Your member of Parliament says that it's a living example of UNDRIP. It's your turn.

Grand Chief Abel Bosum (Grand Council of the Crees (Eeyou Istchee)): Thank you.

Good afternoon, Madam Chair and honourable committee members.

I am Grand Chief Abel Bosum. On behalf of the Cree Nation of Eeyou Istchee, I am pleased to appear before you today with Deputy Grand Chief Mandy Gull; Paul John Murdoch, corporate secretary; Tina Petawabano; Brian Craik; Paul Joffe; Bill Namagoose; Paul Workman; Melissa Saganash; and, our youth, Sehoneh Masty.

The Cree Nation of Eeyou Istchee includes more than 18,000 Eeyouch, or Cree, occupying our traditional territory of Eeyou Istchee. This territory covers around 400,000 square kilometres and is located mainly to the east and south of James Bay and Hudson Bay.

Indigenous peoples in all regions of the world share common challenges and injustices. These include the debilitating effects of colonization, land and resource dispossession, racial discrimination, marginalization, and the devastating effects of severe impoverishment.

We are proud that Romeo Saganash, a member of our Cree Nation, is the sponsor of Bill C-262. The bill will significantly advance the human rights of indigenous people in Canada and, if adopted, Bill C-262 will also set an important precedent for indigenous peoples in other countries worldwide.

The central focus of the bill is the United Nations Declaration on the Rights of Indigenous Peoples. As underlined in call to action number 43, the Truth and Reconciliation Commission calls on the federal government and all levels of government to implement the UN declaration "as the framework for reconciliation".

In regard to the UN declaration, collaborative processes will also be established with the federal government that will enhance harmonious and co-operative relations. In addition, the bill repudiates colonialism as well as fictitious and racist doctrines of superiority, such as as "discovery" and *terra nullius*. Therefore, it is absolutely essential that Bill C-262 is adopted by both Houses of Parliament. We urge every political party to support this human rights legislation.

Since the early 1980s, our leaders and representatives have attended and participated in the UN standard-setting processes that led to the adoption of the UN declaration in 2007. We always knew that we were both international and domestic actors. Our international personality has been repeatedly confirmed not only by the 20 plus years of negotiating the UN declaration, but also by the increasing number of indigenous issues and processes taking place at the United Nations with direct indigenous participation.

Our Cree Nation knows what it's like to be treated as if we have no inherent rights or no pre-existing rights. In the early 1970s, the construction of the James Bay hydroelectric project was announced by the premier of Quebec with no regard to our rights. At that time, it was the largest project in Canada's history. We had to go to the door of the Supreme Court of Canada before the government was willing to negotiate an agreement.

When the Cree entered into the James Bay and Northern Quebec Agreement in 1975, we saw it as a partnership in governance, environment, and development issues with Canada and Quebec. However, in the years after the signature of this agreement, relations between the Cree, Canada, and Quebec severely deteriorated. Both governments failed repeatedly to implement the agreement. For over 20 years, we were continually entangled in court cases with both governments, at great expense to all parties.

In February 2002 the Cree entered into a nation-to-nation agreement with the Quebec government. This 50-year agreement is referred to as the Paix des Braves. As affirmed in its preamble, this agreement "is based on a development model which relies on the principles of sustainable development, partnership and respect for the traditional way of life of the Crees". To incorporate sustainable development in our treaty, the James Bay and Northern Quebec Agreement, the agreement was also amended.

● (1640)

Moreover, in February 2008 we entered into the Agreement Concerning a New Relationship Between the Government of Canada and the Cree of Eeyou Istchee. In particular, this agreement established the process of negotiating a Cree Nation government. We are pleased that the Cree Nation of Eeyou Istchee Governance Agreement Act, Bill C-70, was assented to on March 29, 2018.

La Paix des Braves and the Canada-Cree agreement both embrace the basic principles of co-operation, partnership, and mutual respect that are the highlights in the UN declaration. Both agreements reflect a consensual relationship. It has been about 47 years since Quebec's decision to proceed with the James Bay hydroelectric project in Eeyou Istchee without our consent. We have all learned that such unilateral action leads to bitter conflicts that are not in the interest of any party concerned. However, our consensual relations are not limited to governments. Consistent with our right to self-determination, we have entered into more than 90 agreements with Canada and business enterprises. I am well placed to emphasize this point relating to consent, or better yet adding value, since I have often been the chief negotiator in achieving such business and government agreements.

There may also be occasions when we turn down a proposed project. About five or six years ago, when a third party proposed a uranium project in Eeyou Istchee, the Cree Nation and the Government of Quebec rejected the proposal after careful examination and reflection. Our decision received support from the Quebec government and over 200 municipalities. We have the right to safeguard our environment, economy, and way of life from unacceptable risks. We have a responsibility to protect the health, security, and well-being of present and future generations.

In conclusion, I would like to emphasize that our treaties and other agreements must remain living and dynamic agreements for our present and future generations. When there are new and unforeseen circumstances, our treaties and agreements must be appropriately amended. In regard to the James Bay and Northern Quebec Agreement, there have been at least 24 complementary agreements. La Paix des Braves, similarly, was amended in December 2003.

We believe that the two collaborative processes in Bill C-262—to ensure that the laws of Canada are consistent with the UN declaration and to develop and implement a national action plan—can be a useful complement to our treaties and agreements.

Meegwetch. Thank you.

● (1645)

The Chair: Thank you.

The final presentation is from Thunderchild First Nation.

We're very happy to have you, Delbert. Go ahead.

Chief Delbert Wapass (Thunderchild First Nation): Thank you very much.

[*Witness speaks in Cree*]

I want to say good afternoon to members of the esteemed standing committee. Thank you for inviting the Indian Resource Council to testify on Bill C-262. I have made this trip on behalf of the Indian Resource Council, and not on behalf of Thunderchild.

My name is Delbert Wapass. I'm the Chief of Thunderchild First Nation from Saskatchewan. We are located in the heart of oil and gas country, Lloydminster, on the Alberta-Saskatchewan border.

The Indian Resource Council is a national advocacy organization of chiefs. Our mandate is to represent resource-based first nations by ensuring that their oil and gas resources are managed in their best interests. We work with Canada through Indian Oil and Gas Canada, IOGC, and with industry to ensure that our people participate fully in the energy sector and that we derive maximum benefit from these resources.

On behalf of IRC, we are pleased to share our perspectives as you study Bill C-262.

First, we note and recognize that we are making our submission on unceded Anishinaabe lands.

We acknowledge the Honourable Romeo Saganash, member of Parliament, who is championing Bill C-262, which requires the laws of Canada to be in harmony with the United Nations Declaration on the Rights of Indigenous Peoples. The IRC is pleased to support Mr. Saganash's private member's bill and his recommendation for the adoption and implementation of UNDRIP into Canadian law.

We also acknowledge the work of the Truth and Reconciliation Commission of Canada, the recommendations of which, among those of many others, have placed UNDRIP in the spotlight of our discussion today.

We also appreciate the best efforts of the Government of Canada, especially those of the Prime Minister, to make UNDRIP a priority in the context of Canada's reconciliation with the indigenous peoples. The Prime Minister, on many occasions, has reiterated this commitment, and especially with his concise statement that "the Government of Canada is committed to a renewed relationship with Indigenous Peoples, based on the recognition of rights, respect, co-operation, and partnership." We take these words to heart and believe that Bill C-262 embodies and gives life to these words.

When the Minister of Indigenous and Northern Affairs, the Hon. Carolyn Bennett, delivered a speech at the United Nations Permanent Forum on Indigenous Issues at the United Nations Headquarters in New York on April 25, 2017, she too made that statement.

In direct response to the declaration, the Prime Minister has mandated the Minister of Justice and Attorney General of Canada to chair a working group to review all federal laws and policies related to indigenous peoples to reverse the colonial paternalistic approaches. This is about breathing life into section 35 of Canada's Constitution, which formally entrenches the rights of indigenous peoples in Canadian law, and yet which, for far too long, has not been lived up to.

IRC is here today to support these proposals and sentiments and to formally express our support for Bill C-262 and the Prime Minister's responses to UNDRIP, including an internal legal review, and the adoption and implementation of Bill C-262 with its main goal of developing and implementing a national action plan.

Bill C-262 is a new approach to first nations issues. When enacted into law it will advance the process of Canada's framework for reconciliation. IRC recognizes that this federal legislation is needed to reject the colonial structures that continue to oppress the indigenous peoples of this land and to replace these structures with new frameworks that are based on reconciliation.

Further, IRC wants to state clearly that any new legislation must be consistent with Canada's duties and roles, which include fiduciary duties and the historical trust obligations of the crown with respect to first nations lands and resources.

The metaphor of braiding international, domestic, and indigenous laws is relevant to many indigenous traditions in Canada, as stated by some indigenous academics and professionals. The braiding of sweetgrass indicates strength and the drawing together of power and healing. A braid is a single object consisting of many fibres and separate strands. It does not gain its strength from any single fibre that runs its entire length, but from the many fibres woven together. Imagining a process of braiding together strands of constitutional, international, and indigenous law allows one to see the possibilities of reconciliation from different angles and perspectives, and thereby to begin to reimagine what a nation-to-nation relationship, justly encompassing these different legal traditions, might mean.

● (1650)

This is a fitting metaphor for what is contemplated by Bill C-262. It has been 10 years since UNDRIP was adopted by the United Nations on September 13, 2007. It is the right time for Canada to end the debate. Pass and enact Bill C-262.

As highlighted in the United Nations Permanent Forum on Indigenous Issues document, the UNDRIP confirms the right of indigenous peoples to self-determination and recognizes subsistence rights to lands, territories, and resources. The IRC submits that first nation oil and gas producers and other first nations with the potential to produce oil and gas want to achieve self-determination by asserting their jurisdiction, and want their subsistence rights to lands, territories, and resources recognized in Canadian law.

Bill C-262 purports to provide such assurance. Our organization has been an active participant in developing oil and gas legislation that impacts first nations across Canada. It is our intention to develop our own institutional structures that will shift control of oil and gas from Canada and IOGC. This would be a true exercise of sovereignty and self-determination, as contemplated by UNDRIP and Bill C-262.

In 2005, IRC appeared as a witness before the Standing Committee on Aboriginal and Northern Development for its study of Bill C-54, FNOGMMA. In 2009, we appeared again at the standing committee for its study of Bill C-5, An Act to Amend the Indian Oil and Gas Act. In 2009, IRC appeared as a witness before the Senate Standing Committee on Aboriginal Peoples for its study on that same bill, Bill C-5. Presently, in 2018, IRC continues to do joint work with INAC and IOGC.

If this committee decides to proceed with Bill C-262, IRC is willing to share our experience and offer to work jointly with INAC to develop a national action plan to achieve the objectives of UNDRIP, and ensure that the fiduciary and historical trust obligations for first nation lands and resources are protected. Self-determination and indigenous sovereignty can be implemented in practice by UNDRIP through the implementation of free, prior, and informed consent. Critics of free, prior, and informed consent are concerned about the definition of this concept. Some have equated it to a veto. We at IRC have no such apprehensions. We know that we have rights and title to our land. Canadians courts, including the Supreme Court, did not create these rights; they merely confirmed the existence of these rights. UNDRIP did the same thing by confirming our rights, which existed long before we were colonized.

Free, prior, and informed consent is a tool that can be used to ensure respectful and meaningful consultation with indigenous people whenever and wherever their rights are being impacted. It is another tool for reconciliation.

[*Witness speaks in Cree*]

Thank you.

● (1655)

The Chair: Thank you.

We're going to a round of questioning. First, you'll each have seven minutes.

We start with MP Gary Anandasangaree.

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): Thank you, Madam Chair.

Thank you to the panel for joining us.

While I'm going to ask some questions, I do want to save one question for Sehoneh Masty, who is with the youth council, I believe.

This is directed to the grand chief. With respect to the recognition of rights framework that was introduced by the Prime Minister recently, what are your thoughts on it relation to UNDRIP? How do you see that working in conjunction with the legislation?

Grand Chief Abel Bosum: I think our position is that UNDRIP should be the framework for that legislation. I think what UNDRIP really lays out is very comprehensive in addressing all of the issues that indigenous people would like to deal with.

Mr. Gary Anandasangaree: Does anybody else want to add anything to that?

Paul.

Mr. Paul Joffe (Legal Counsel, Grand Council of the Crees (Eeyou Istchee)): The framework should definitely recognize that indigenous peoples' rights are human rights. When Canada goes to the UN, there's no question about that, whether it's a Conservative Government or a Liberal Government. When we come home, however, neither government shapes its arguments or describes indigenous rights as human rights. It's not right that the charter in part I is considered to be about human rights, but the human rights of indigenous peoples in part II aren't dealt with equally.

In the Tsilhqot'in Nation decision, when the Supreme Court said that part I and part II are sister provisions both limiting the powers of federal and provincial governments, that should be based first of all on our characterizing the rights accurately as human rights.

In terms of the framework, you have the UN declaration but there are many other elements. Some of the elements would be in Romeo's bill, which could be followed up on, such as repudiating colonialism, and a lot more needs to be done there. Certainly with regard to the doctrine of discovery and *terra nullius*, the Supreme Court went part of the way in, I believe, paragraph 69 of the Tsilhqot'in Nation decision when its said that *terra nullius* never applied in Canada, as confirmed by the royal proclamation. If it were confirmed by the royal proclamation, then it also must have confirmed that the doctrine of discovery doesn't apply.

It would be good to clear the air there, because it really disturbs indigenous peoples to think that they were here thousands of years before and yet discovery somehow gives the power and rights to someone else.

I'll stop there.

Thank you.

Mr. Gary Anandasangaree: Thank you, Mr. Joffe.

Chief Wapass, I just want to bring you back to the conversation about FPIC. I know that a considerable amount of discussion has taken place in these hearings with respect to FPIC.

As a council, how do you view and treat the issue of FPIC with respect to UNDRIP? Is it something for which there is already an existing framework or is it something that will come in as part of UNDRIP?

Chief Delbert Wapass: I think what's important to understand is that any entity or organization is not a rights and titles holder. The resource council respects the rights of those first nations it represents. The consultation has to be with them, and we help facilitate and mediate that.

In terms of the free, prior, and informed consent, definitely with any type of development, whether it's on their treaty lands or their traditional lands, there has to be that free, prior, and informed consent. Even among tribes, among nations, among ourselves, we have to respect each other's territory, and we do. That's always been our practice.

● (1700)

Mr. Gary Anandasangaree: My final question is directed to Sehoneh Masty. She, I believe, is a member of your youth council. One thing we as a committee haven't really done properly is to hear from young people.

I would like to give her the opportunity to express to the committee what she feels about the UN Declaration on the Rights of Indigenous People and how that will shape her future.

Ms. Sehoneh Masty (Representative, Grand Council of the Crees (Eeyou Istchee)): I don't know what to say.

This is really my first time coming to one of these things. I came with my mom because I wanted to learn more about indigenous rights and indigenous law because this fall I'll be going to college and taking justice studies. I'm trying to learn more about it before I start.

Mr. Gary Anandasangaree: Deputy grand chief, maybe I can direct this to you. Can you give us your perspective on how this will reshape the future of young people, particularly in indigenous communities?

Deputy Grand Chief Mandy Gull (Grand Council of the Crees (Eeyou Istchee)): Good afternoon.

I'm a proud mommy. I brought my daughter to work with me today, just like our MP, Romeo Saganash, did. I think this is something historical, and you have to open it up to the youth. You have to give them the opportunity to see that they can sit at the table the way leadership does, because they are following in our path.

I'm unique because I'm the second generation after the James Bay and Northern Quebec Agreement. Being a summer student, learning, and becoming a leader myself, seeing what our agreements have done for our Cree Nation, seeing that we have been, in a sense, a living model for what UNDRIP could achieve in Canada, I think that's been very significant.

I'm really glad she was given the opportunity to express herself. This is something of interest to her. I hope other youth see that when you're invited to something like this, you're given the opportunity to speak also.

Mr. Gary Anandasangaree: I apologize, because from where I sit, I couldn't actually see you.

The Chair: Thank you.

The questioning now moves to MP Kevin Waugh.

Mr. Kevin Waugh (Saskatoon—Grasswood, CPC): Thank you.

Welcome to all.

Welcome back, Mr. Joffe. It wasn't that long ago that you were sitting just one over.

You all touched on free, prior, and informed consent, and two of the groups in front of me have had long negotiations. Some go on for months and years.

So let's face it; let's talk about the oil and gas, if we can, Mr. Wapass, because you come from my province. You've had a tenacious relationship, if I can say that, with Husky Energy, just next door to you, if you don't mind my saying that. I think I'm correct on that.

So here we have Kinder Morgan. You talk about moving gas and oil, and we talk about this every day in the House of Commons. How will this bill improve getting oil and gas to where it should, through B.C., when right now we have a number of agencies in British Columbia supporting it, we have a handful not supporting it, and we're deadlocked?

Chief Delbert Wapass: Well, that's not why I supported you when you were in my riding.

Voices: Oh, oh!

Mr. Kevin Waugh: Thank you very much for that. I've probably lost your support now.

Voices: Oh, oh!

Chief Delbert Wapass: It's good to see you. You still have your radio voice.

Mr. Kevin Waugh: TV too.

Chief Delbert Wapass: Yes, your TV voice too.

I'm trying to get away from answering the question, as you can see.

Mr. Kevin Waugh: Yes. I know.

Chief Delbert Wapass: As I said earlier, it goes back to those first nations and respecting them. As much as we have a socio-economic situation within our respective communities, we have to acknowledge and respect the reality, the situation, and the leadership mandated by their people for the position they have taken. I haven't been privy to the types of discussion and dialogue that have taken place between Kinder Morgan and Grand Chief Stewart Phillip's constituents to say what the problem is. I can see, though, that in different instances within our respective area, we've been affected as well. I could put our own self-interests forward on oil and gas and say that we need the pipeline. At the same time, though, I have to respect the position our brothers and sisters in B.C. are taking and why they're taking it. I have to try to understand why it is, as much as it does affect us.

I believe, if there's a way forward, we shouldn't be talking from the wallet. We should be trying to figure out how we can best protect the lands, the resources, Mother Earth, our oceans, our waters, and so on and so forth. They are paramount for all of us.

We went through the Husky oil spill. The way Husky treated Thunderchild First Nation was classic. They were a class act. They worked with us on what we wanted, what our elders wanted, and what our communities wanted to see in fixing the problem. They did not renege. They did not talk from a dollar perspective. They were there supporting us. To this day, they are still supporting us. It was never industry, or the provincial government, or Canada coming to dictate to us what it should be and how it should be. It was, “Thunderchild, how do you want to see it? That's what we're going to do.” And that's how it was done.

● (1705)

Mr. Kevin Waugh: Thank you for that. I think we needed to hear that.

Mr. Plant, you're in B.C. Holy God, what's going on there?

Voices: Oh, oh!

Mr. Kevin Waugh: The whole world has stopped in B.C.

You've dealt with this. You're a lawyer. You're in policy. You've had everyone in this country look at you and ask what's going on, so I want you to talk about FPIC, the negotiations, and the right to choose.

I just talked about 33 groups that are directly affected by Kinder Morgan. They want it, and you have a handful who don't. How do you work around this?

Mr. Geoff Plant: The first thing I have to say is that while there has been a great deal of progress on the ground in some communities in relationship-building between Kinder Morgan and first nations, obviously it's not complete.

The whole project of how to encourage and incent constructive relationship-building between, say, the corporate sector and first nations is a hugely important project. There are some leaders in that, there are some laggards, and there are some caught in the middle of very complex and difficult projects.

What FPIC is about, what UNDRIP is about, is at a higher level. It's about governments, including indigenous governments, creating processes that will lead to greater confidence in decision-making and greater respect for indigenous rights. I would say that what you are seeing on the ground in British Columbia in large measure is a result of—you can choose your qualifier—an imperfect process, a flawed process, and a not yet successful process, clearly. Maybe what we need to do is look at what hasn't worked there and use that to inform the conversation about how to do things better.

On behalf of the 4.3 million people of British Columbia, I wish I could give you a unanimous answer, but the province as a whole is deeply divided on this project. The indigenous aspect of it is a hugely important part, but frankly not the only part.

Mr. Kevin Waugh: A champion would be Grand Chief Bosum.

It took you years and maybe decades to get that agreement with James Bay hydro. Is that something we can build on here now when we look at where Bill C-262 is going, at where you were some 40 years ago, and at where everybody wants to be in terms of that agreement you had with them and still have today?

When we talk around the table here, industry is on eggshells, right? We've heard from some, but maybe you can talk about your journey, the one that you opened up for your people, and there's the hope that it's going to continue.

● (1710)

Grand Chief Abel Bosum: I'll answer in two parts. First, I'll just explain that the James Bay and Northern Quebec Agreement has provisions dealing with assessment, with how to assess projects in our territory, and they apply to all industries, whether it be Hydro-Québec or mining, forestry, and so forth. It is through that process of collaboration that we arrive at a conclusion, right?

Paul John here is on that committee. Maybe he can explain a little more about how it works.

Mr. Kevin Waugh: I think we're running out of time, though.

The Chair: I think that will have to be for another time, because we now go to MP Romeo Saganash.

Mr. Romeo Saganash: Thank you, Madam Chair.

Thank you to all our guests this afternoon.

[*Member speaks in Cree*]

Thank you to Mr. Plant as well.

I'll come to a very specific question about the costs you mentioned.

Let me start with you, Grand Chief Bosum. I know that the James Bay and Northern Quebec Agreement is the first modern treaty in this country and that it has contributed a lot to the development and recognition of indigenous peoples in this country with the agreements that followed along the way.

Do you consider the James Bay and Northern Quebec Agreement an instrument of reconciliation? Do you believe that the concept of free, prior and informed consent is embodied in the James Bay and Northern Quebec Agreement? I'm talking about all four elements: “free”, “prior”, “informed”, and “consent”. Do you believe that they are already embodied in the James Bay and Northern Quebec Agreement?

In listening to many of the testimonies here, I see the trend that recognition of indigenous peoples in this country is good for the environment and good for the economy. I wonder if you could elaborate on how beneficial it was for the Cree in northern Quebec, but also for other non-Crees in the region and beyond. I'd like you to elaborate on all of those things. I know that's a lot in one question, but as a former negotiator I'm sure you can handle that.

Grand Chief Abel Bosum: [*Witness speaks in Cree*]

Well, first of all, I think the agreement does have the framework for addressing many issues. As I mentioned in my statement, we saw the James Bay agreement as a framework for partnership in governance, environmental issues, and development issues. Now, it has taken some time for the Government of Quebec to understand what we meant by that, and of course we butted heads in the early years.

However, since 2002 when we signed the Paix des Braves, we took a different approach to how we were going to deal with development. Since then, we have been able to implement our treaty in all sectors: education, health, policing, justice, and so forth. As well, we have been able to negotiate over 40 agreements with the industries and close to 50 agreements with the governments, so there is a way.

I want to turn to Paul John again and just have him maybe explain a little about the environmental assessment process, which could certainly be a way to deal with some of these megaprojects we're talking about across the land.

Mr. Paul John Murdoch (Chief Negotiator, Grand Council of the Crees (Eeyou Istchee)): *Meegwetch*.

[*Witness speaks in Cree*]

I'm so glad you brought up the other elements of free, prior, and informed consent, because everybody gets stuck on consent, yet when we present a project in the community or Brian and I are involved in some assessment, it's the "free, prior, and informed" part that is really important.

When I listen to my grand chief speaking and I look at the agreements he negotiated, it's not for nothing that the agreements begin with the word "relationship". That's what the James Bay and Northern Québec Agreement is. When you read UNDRIP, you can't read article 19 in isolation; you have to read it with 18. It's a relationship. When people harp on the issue of consent and on free, prior, and informed consent, and there's fear that comes out of it, you automatically see that the person is looking at it like a transaction. If you look at it like a transaction, you'll lose, and that's always been the source of butting our heads on the James Bay and Northern Québec Agreement.

However, once we get it back into a relationship and we get to own the decision that comes out of the process, instead of focusing on the "no" that would come from the community you instead get to see the incredible value of a "yes" that comes from the community. There's not a single project in Cree territory that has gone through an environmental impact assessment that wasn't made better by the land users and the advisers and the decision-makers from the community. We've approved way more projects than we've held back. When we approve all of those projects, we improve them as well. This is where it's a bit sad when we don't recognize the relationship part.

There are guiding principles. Every once in a while we get stuck on a project, and Brian is the voice of wisdom who usually sends us back to, "Hey, let's read the treaty. What does the treaty say about the principles we're supposed to use when we make these decisions together?" We're two representatives named by the Cree Nation Government, and we have two representatives named by Quebec, and this is our decision we send to the minister.

After talking about first nations' rights, protecting the land, protecting the environment, and protecting wildlife, people are surprised that part of our mandate—per subsection 22.2.4, article f) on the involvement of the Cree people in the application of this regime—is to protect "the rights and interests of non-Native people, whatever they may be". You have Cree representatives defending the rights of non-native people in our territory, "The right to develop by persons acting lawfully in the Territory". You have Cree representatives defending the right of people to act lawfully and then minimizing negative impacts and trying to augment social impacts. As the grand chief said, when you focus on the relationship and get to be a part of the decision, we'll defend the decision. We'll use our institutions to defend the decision. However, when we focus on consent, you're reducing us to a simple transaction, we're put in isolation, and you're not going to get the full value of our participation.

● (1715)

Mr. Romeo Saganash: I have a quick question for Chief Wapass.

You talked about respecting each other's territories. I'd like you to have a chance to elaborate a little on that.

Chief Delbert Wapass: Through the treaty land entitlement process back in Saskatchewan, for example, we have Treaty No. 4 territories or other treaty areas within Saskatchewan with the ability to buy land in other areas of Saskatchewan. There has always been that respect where you go and you talk. If it's in our area, our traditional area, a chief will come to talk to us. Chief Todd Peigan, let's say, from the Pasqua First Nation in the Regina area will come to talk to me in our area—for example, "We'd like to do this. Is there an issue? How can we work this out?" If there's a concern or issue that can't be resolved, it's respected. So that's what I mean by that.

I just want to make the case in point that I respect the work that all you guys do here. I don't vote federally, provincially, or municipally. I vote in my Indian government. But I come here to represent them, and to respect the work that you do.

Thank you.

The Chair: The questioning will now move to MP Danny Vandal.

You only have about a minute or two.

Mr. Dan Vandal (Saint Boniface—Saint Vital, Lib.): Okay.

Grand Chief, let's assume that Bill C-262 is adopted. What should the next steps be for the federal government?

Grand Chief Abel Bosum: Once it's legislated, then I think we have to sit down, work out the framework agreement that is being discussed at the moment, and define exactly how it would be implemented. That work needs to be done together—with the government and first nations people.

● (1720)

Mr. Dan Vandal: Thank you.

Chief Wapass, I have the same question for you.

Chief Delbert Wapass: What the Grand Chief said.

Voices: Oh, oh!

The Chair: That's a great way to end.

I want to thank you all for coming. The committee will be moving in camera, so there won't be an opportunity for our members to thank you personally. On their behalf, we really appreciate your input. The good work that you've done is an example for the whole country. Coming from the exploration side, I know that I always looked to the Quebec Cree for a deal that worked for everybody. It's really a shining example of success.

Merci beaucoup. *Meegwetch*.

[*Proceedings continue in camera*]